Filed 4/30/19 In re C.Y. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re C.Y., a Person Coming Under the Juvenile Court Law.	
S.S. et al., Petitioners, v. SUPERIOR COURT FOR THE COUNTY OF CONTRA COSTA, Respondent; CONTRA COSTA COUNTY CHILDREN & FAMILY SERVICES BUREAU, Real Party in Interest.	A156548 (Contra Costa County Super. Ct. No. J1800536)

The parents of baby C.Y. petition under California Rules of Court, rule 8.542 to vacate the trial court's order setting a hearing under Welfare and Institutions Code section 366.26[1] at the six-month review hearing. Mother contends there was a substantial probability C.Y. could be returned to her if services were extended for another six months. Both parents contend they were not provided with adequate reunification services. Their contentions are unsupported by the record. We deny both petitions on their merits.

[1] All further statutory references are to the Welfare and Institutions Code.

BACKGROUND

Removal and Petition

C.Y. was born in May 2018, suffering from withdrawal symptoms. Both parents displayed erratic behavior during Mother's labor, and Father " 'smelled of drugs.' " Mother and child tested positive for cocaine and opiates.

Mother admitted that she used marijuana, methadone, " 'oxy' " and " 'narco's' " in the past, but both parents denied using drugs. Father was arrested on an outstanding warrant for obstructing or resisting police officers.

C.Y. was detained in foster care. The Contra Costa County Children and Family Services Bureau (the Bureau) filed a juvenile dependency petition alleging pursuant to section 300, subdivision (b) that Mother had a chronic polysubstance abuse problem that placed C.Y. at ongoing risk of harm and neglect and both she and C.Y. tested positive for cocaine and opiates at his birth (b-1); Father failed to protect C.Y. from Mother's substance abuse (b-2); and that his extensive criminal background and recent arrest for a serious offense left C.Y. without proper provisions for care (b-3).

Mother pled no contest to the b-1 allegations and Father submitted on the b-2 and b-3 allegations, all of which were sustained.

Disposition

The Bureau's status report for the July 19, 2018 disposition hearing recommended the court adjudge C.Y. a dependent child and offer reunification services to both parents. Mother had a history of arrests, but no known convictions, dating from 1997 through 2008. Father had an extensive history of arrests and four convictions, including three felonies.

Mother told the social worker she was partially paralyzed as the result of a stroke some five years before C.Y. was born. Her condition necessitated in-home health care and left her unable to drive due to seizures. About two years after her stroke she began abusing prescription medication. Over the following years, after losing her father and other family members, she began to abuse other substances.

Mother told the social worker that C.Y.'s birth motivated her to address her substance abuse. On May 23 she entered a three-month inpatient drug treatment program. She was doing well in groups, paying attention, and staying focused and engaged. Mother's counselor said she asked for help when needed, knew her physical boundaries, and did not allow her physical limitations to impair her independence. Mother, too, shared that she was "very strong and independent despite her physical limitations," and that her limited mobility did not hinder her ability to live on her own. She was attending medical appointments and taking prescription medication as recommended. Her three recent drug tests were positive only for methadone.[2]

Mother had participated in three out of five scheduled visits, failed to show up for one visit and cancelled another due to transportation problems. During visits she was affectionate and appropriate with C.Y. The social worker wrote that Mother "may need assistance during the visits due to her physical condition, in that her right arm has limited mobility and caring for a baby with one arm can be difficult," but she "is capable of caring for her child and shared that she cared for her second child . . . for eight years with the same physical condition, if not worse condition [than] now."

Father's arrest warrant had been cleared and he had no pending criminal cases in the county. He was "willing to do anything possible to reunify" with C.Y. He had not begun drug testing because he would test positive for marijuana, but said he had stopped using the substance and believed it would soon be out of his system.

The court adopted the Bureau's recommendation that C.Y. be removed from parental custody with reunification services and supervised visitation for both parents.

Six-Month Status Review Reports

The six-month review hearing was originally scheduled for January 3, 2019. The six-month status report, dated December 24, 2018, recommended that the court terminate reunification services for both parents and set a permanency planning hearing under section 366.26.

[2] The positive results for methadone apparently reflect Mother's medication-assisted treatment for opiate addiction.

Mother entered The Rectory Women's Recovery Center inpatient drug treatment program in June 2018 and actively participated in the program until her successful discharge on August 22. But after she completed the program, Mother failed to enroll in an aftercare program (Ujima-East) and missed 17 drug tests between July 6 and November 20. As of late December, Father had neither drug tested nor engaged in any services.

The social worker's report recounted the Bureau's efforts to provide reunification services to both parents. "[Father] has not complied with any objectives on his Case Plan. He has not made any efforts to complete one drug test, enroll in parenting Classes, Substance Abuse Treatment, or Counseling. This Worker attempted to engage both parents by trying to go over [their] case plan several times. On August 1, 2018, this Worker introduced herself to both parents and requested a meeting to go over [their] case plan; the parents stated they would call this Worker. On August 8, 2018, this Worker texted [Father] to schedule an appointment for the following day, [Father] agreed to meet this Worker and did not show for the meeting nor did he call to cancel. On August 20, 2018, this Worker telephoned [Mother] and asked her to meet with this Worker after she graduated from the program so that we can go over her after[care] plan[.] [Mother] never contacted this Worker. On August 29, 2018, this SW was able to meet with both parents and go over the importance of their case plan[.] [A]t that time they both said they would communicate with this Worker and check in on a regular basis. On September 14, 2018, this SW sent the parents a letter including court date and resources. On October 4, 2018, this worker went to the visitation room to remind the parents about complying with their case plans. On December 19, 2018, this worker attempted to make contact with [Mother] via text message, she replied that she was busy and would call this worker back. As of the writing of this report, [Mother] has not contacted this worker as stated. The Bureau is concerned that both parents continue to be reluctant to speak with this worker to discuss their progress in meeting the objectives of their case plans."

The services provided to the parents included unannounced home visits and attempted telephone contact with Father, referrals to substance abuse treatment centers

for Mother, and referrals for random drug testing, substance abuse treatment programs, parenting classes, domestic violence classes and counseling for both parents. Mother had participated in 21 out of 23 scheduled supervised weekly visits. Father had participated in 15 out of 18 visits, with one cancellation for illness and two no-shows. The parents were affectionate and appropriate with C.Y. during visits.

In a supplemental report dated February 5, 2019, the social worker explained that when Mother completed the Rectory program she was to immediately enter an outpatient treatment facility and transfer her methadone program from a clinic in Richmond to a facility in Antioch. She did not enter the outpatient program and had missed 27 out of 35 drug tests.

On January 16 Mother contacted the social worker and expressed a strong interest in enrolling in outpatient treatment. The social worker arranged for Mother to meet with a "Parent Partner and Substance Abuse Liaison" on January 25 to help her get into a program quickly. At that meeting Mother scheduled an intake appointment with Ujima East for January 31, but she failed to attend the appointment or respond to the social worker's follow-up inquiry on February 4. Father made no efforts to drug test or enroll in parenting classes, substance abuse treatment, or counseling. He missed all 36 scheduled drug tests between June 6, 2018, and February 4, 2019.

Six-Month Review Hearing

The six-month review hearing was held on February 7, 2019. The social worker's testimony was consistent with the status review reports. She met with Father several times to review his case plan. Father was "pretty much non-verbal," but he would nod or say " 'Okay' " when she went over the plan's requirements with him. Father said he was going to participate in his services, but he denied any drug use other than marijuana and asked the social worker why he needed to drug test. When the social worker explained the court had ordered drug testing and he needed to comply to regain custody, he nodded and said " 'Okay.' " He participated in all but two or three scheduled visits. Neither parent ever asked for clarification of their case plan requirements.

C.Y.'s attorney concurred with the Department's recommendation to terminate reunification services and set a permanency planning hearing. The court agreed. It explained: "This is not a matter of just big talk and no action. Just visiting your child once a week is lovely, but you have changes you both had to make; significant changes you both had to make. [¶] You had a child born positive [for] cocaine and opiates. They don't get much more serious. You did a little program and dropped off the face of the earth, practically did nothing further, and now you are coming in on . . . February 7th, saying you may be going into a program some time this week. [¶] I'm sorry. Your child is growing up. It can't wait forever for the parent to become appropriate. [¶] And, for the father, you have done nothing, so I can't make anything else but follow the recommendations in this report."

The court found by clear and convincing evidence that the Bureau provided or offered reasonable reunification services to the parents, that both parents failed to participate regularly and make substantial progress on their case plans, and that returning C.Y. to them would create a substantial risk of detriment to his safety, protection or physical or emotional well-being. A permanency planning hearing pursuant to section 366.26 was set for June 6, 2019.

Both parents filed timely petitions under California Rules of Court, rule 8.452.

DISCUSSION

I. *Reasonable Services*

Section 366.21, subdivision (e) governs six-month review hearings. For children younger than three years old when removed from their parents, it authorizes the court to set a hearing pursuant to section 366.26 if it finds by clear and convincing evidence that the parents failed to participate regularly and make substantive progress in a court-ordered treatment plan. But if reasonable services were not provided, the court must continue the case for a 12-month permanency planning hearing. (§ 366.21, subd. (e).)

Both parents contend the court should have continued the case because they were not provided with reasonable reunification services. What constitutes "reasonable" reunification services varies in each case with the particular needs of the family, but as a

general matter reunification services are adequate if: (1) the case plan identifies the problems leading to the loss of custody; (2) the offered services are designed to remedy those problems; and (3) the agency maintains reasonable contact with the parent and makes reasonable efforts to assist that parent in areas in which compliance proves difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) The standard is not whether services were perfect, but whether they were reasonable under the circumstances. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) On review, our "sole task . . . is to determine whether the record discloses substantial evidence which supports the juvenile court's finding that reasonable services were provided or offered." (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762; see *T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1238-1239 [appellate court conducts substantial evidence review " ' "bearing in mind" ' " the clear and convincing standard of proof].) In assessing the parents' claims of inadequate services, we view the evidence in a light most favorable to the court's findings, resolving conflicts and construing all reasonable inferences in support of the judgment. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545 (*Misako R.*); *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.)

Father asserts his services were inadequate because the social worker failed to meet with or at least contact him by phone or letter at least once a month between the disposition and six-month review hearings. Specifically, he contends the evidence only shows "with certainty" that such contact or attempted contact occurred in August, September, and October 2018, and that the social worker should have done more to ensure he understood what was required of him. The contentions are without merit.

The record shows the social worker attempted to contact Father and engage him in his case plan "several times monthly." Those efforts were stymied by Father's reluctance to speak with her, submit to drug testing, or engage in drug treatment, counselling or parenting classes. It is not the Bureau's responsibility to "take the parent by the hand" (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5) to ensure he participates in the services offered to him. C.Y.'s removal put Father on notice regarding the path he should follow to have C.Y. placed in his care. In spite of the Bureau's efforts, he

declined to take even the first meaningful step along the way. "A noncustodial parent may not refuse to participate in reunification treatment programs until the final reunification review hearing has been set and then demand an extension of the reunification period to complete the required programs. [Citations.] Neither may a parent wait silently by until the final reunification review hearing to seek an extended reunification period based on a perceived inadequacy in the reunification services occurring long before that hearing." (*Los Angeles County Dept. of Children Etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1092-1093; *In re Michael S., supra*, at p. 1463, fn. 5.) Such is the case here.

Mother's reasonable services argument is equally unpersuasive. She asserts the Bureau failed to offer her services designed to assist her with the limited mobility in her right arm and the seizure condition that prevented her from driving. But there is no evidence Mother needed or requested such services. To the contrary, the record shows she was capable of caring for C.Y. despite her limited mobility, would ask for help if she needed it, and had cared for C.Y.'s older sibling for eight years when her physical condition was possibly worse than at present. Moreover, there is no evidence Mother needed or requested transportation services beyond what the Bureau offered her. It is too late at this juncture for her to complain reunification services were inadequate because such additional services were not provided. (*Los Angeles County Dept. of Children Etc. Services v. Superior Court, supra*, 60 Cal.App.4th at pp. 1092-1093.)

Because we affirm the juvenile court's reasonable services finding on the merits, and in recognition of the import of these proceedings to C.Y. and his family, we need not and do not address the Bureau's argument that the parents forfeited their right to challenge the adequacy of reunification services in this court.

II. Significant Progress and Substantial Probability of Return

Mother contends the court erred in setting a hearing under section 366.26 because there is a substantial probability C.Y. may be returned to her if she is given an additional six months of reunification services. The juvenile court reasonably disagreed.

At the 6-month hearing for a child under three years of age at initial removal, the juvenile court may extend reunification services for an additional six months if it finds a "substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian . . . within the extended period of time or that reasonable services have not been provided to the parent or legal guardian." (§ 366.21, subds. (g)(1), (e)(3), (g)(7).) To find such a substantial probability the court must find the parent has made significant progress in resolving the problems that led to the child's removal and demonstrated the capacity and ability to complete the objectives of her treatment plan and provide for the child's safety, protection, and physical and emotional well-being. (§ 366.21, subd. (g)(1)(B).) We review the juvenile court's findings for substantial evidence. (*Misako R., supra*, 2 Cal.App.4th at p. 545; *In re Victoria M.* (1989) 207 Cal.App.3d 1317, 1326.)

Substantial evidence supports the court's decision not to extend services in this case. While Mother consistently visited C.Y. and commendably completed a residential drug treatment program, she then, as the court put it, "dropped off the face of the earth." Mother simply stopped drug testing and failed to enter required outpatient treatment. Although Mother solicited the social worker's help to enter outpatient treatment shortly before the six-month hearing, she failed to attend the intake appointment or respond to the social worker's attempt to follow up with her. On this record the court appropriately declined to find a substantial probability C.Y. could be returned to Mother's care within the extended time frame.

DISPOSITION

The petition for an extraordinary writ is denied on the merits. (See § 366.26, subd. (l); see *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) Our decision is final immediately. (Cal. Rules of Court, rule 8.452(i), 8.490(b).)

_____
Siggins, P.J.

WE CONCUR:

_____
Petrou, J.

_____
Wiseman, J.[*]

In re C.Y., A156548

[*] Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.